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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,902	03/15/2004	Robert L. Turk	13615.60	1473

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Lisa M. Soltis  
Illinois Tool Works Inc.  
3600 West Lake Avenue  
Glenview, IL 60025

EXAMINER

DURAND, PAUL R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/800,902

Applicant(s)

TURK, ROBERT L.

Examiner

Paul Durand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/25/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/13/2005 has been entered.

### ***Election/Restrictions***

2. Applicant's has not traversed the holding of constructive election in the office action mailed 1/11/2005. Accordingly, the election is considered to be without traverse.

Claims 16 and 22-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/13/2005.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1,2,4-6,9,10,12 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Moeller (US 6,619,527).

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

In regard to claims 1 and 2, Moeller discloses the invention as claimed including a combustion tool 10, with motor 40, suspension mechanism 50, disposed within cylinder head 34, defining a cavity 52, with floor 56, the cavity substantially encloses the fan motor, with the lower end of the fan motor being spaced above the floor, restraining member 116, mounted to the cylinder head with bolts, elastic member 78, disposed within the tool, relative to the motor and directly between the cylinder head and the motor to absorb force along the axial direction (see Figs. 1-3,6 and C5,L8 – C7,L54).

In regard to claims 4 and 13, Moeller discloses the invention as claimed including restraining member 116, disposed radially outward of the fan motor (see Figs. 2 and 3).

In regard to claims 5,6,10 and 12, Moeller discloses the invention as claimed including an integral piece elastomer elastic member 78 (see Fig. 6 and C6,L60-67).

In regard to claim 9, Moeller discloses the invention as claimed including a combustion tool 10, combustion chamber 36, with motor 40 connected thereto, suspension mechanism 50, disposed within cylinder head 34, defining a cavity 52, with floor 56, the cavity substantially encloses the fan motor, with the lower end of the fan motor being spaced above the floor, restraining member 116 mounted to the cylinder head with bolts, restraining the elastic member 78, the member being disposed within the tool, relative to the motor and directly between the space defined by the cylinder head and the motor to absorb force along the axial direction (see Figs. 1-3,6 and C5,L8 – C7,L54).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7,8,14,15,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller.

In regard to claim 7,8,14 and 15, Moeller discloses the invention substantially as claimed including an arcuate shaped restraining member 116, secured to the cylinder head with bolts. What the invention of Moeller does not disclose is the use of a snap ring to secure the suspension ring to the cylinder head. However, the examiner takes Official Notice that it is old and well known in the art to provide a snap ring or a retaining

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ring to hold an object inside a recess for the purpose of preventing the accidental removal of the object. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Nikolich with a snap or retaining ring instead of a ring shaped retaining cap for the purpose of preventing the accidental removal of the suspension mechanism.

In regard to claims 20 and 21, Moeller discloses the invention substantially as claimed including a combustion tool 10, with motor 40, suspension mechanism 50, disposed within cylinder head 34, defining a cavity 52, with floor 56, the cavity substantially encloses the fan motor, with the lower end of the fan motor being spaced above the floor, restraining member 116, mounted to the cylinder head with bolts, elastic member 78, disposed within the tool, relative to the motor and directly between the cylinder head and the motor to absorb force along the axial direction (see Figs. 1-3,6 and C5,L8 – C7,L54). What the invention of Moeller does not disclose is the use of a snap ring to secure the suspension ring to the cylinder head. However, the examiner takes Official Notice that it is old and well known in the art to provide a snap ring or a retaining ring to hold an object inside a recess for the purpose of preventing the accidental removal of the object. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Nikolich with a snap or retaining ring instead of a ring shaped retaining cap for the purpose of preventing the accidental removal of the suspension mechanism.

7. Claims 3,11 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moeller (US 6,619,527) in view of Nikolich (US 4,403,722).

Moeller discloses the invention substantially as claimed including a combustion tool 10, combustion chamber 36, with motor 40 connected thereto, suspension mechanism 50, disposed within cylinder head 34, defining a cavity 52, with floor 56, the cavity substantially encloses the fan motor, with the lower end of the fan motor being spaced above the floor, restraining member 116, restraining the elastic member 78, the member being disposed within the tool, relative to the motor and directly between the space defined by the cylinder head and the motor to absorb force along the axial direction (see Figs. 1-3,6 and C5,L8 – C7,L54). What Moeller does not disclose is an elastic member connected directly to the motor and solely constraining the axial movement of the motor. However, Nikolich teaches that it is old and well known in the art of suspension mechanisms to provide an elastic resilient member 65, connected directly to the motor 61, and solely providing support for any axial force or shock, which in the broadest reasonable interpretation includes acceleration ( $F=ma$ ) for the purpose of providing support to a fan motor during operation. Therefore, it would have been obvious to one having ordinary skill at the time the invention was made to have provided the invention of Moeller, with the directly connecting and force absorbing suspension mechanism for the purpose of providing support to a fan motor during operation.

In regard to claims 7,8,14 and 15, Moeller discloses the invention substantially as claimed as applied to claims 1 and 9 above including an arcuate shaped restraining member 116. What Moeller does not disclose is the use of an arcuate shaped restraining member or a "C" clip.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-15 and 17-21 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
July 6, 2005

  
Stephen F. Gerrity  
Primary Examiner  
571-272-4460